THE "CARL OFFERSEN"; WEAVING SUPPLIES CORPORATION & ORS. v. THE "CARL OFFERSEN" OWNERS

[O.C.J. (Chua J.) November 7, 1978]

[Singapore — Motion in Admiralty in Rem No. 4 of 1975]

Shipping Law — Claim against shipowners for short-delivery of cargo — Application for stay of action — Court's discretion — Factors tending to reinforce stay of action.

Practice and Procedure — Jurisdiction — Disputes between parties had no connection with Singapore — Stay of action — Court's discretion.

On January 8, 1975, the plaintiffs, whose address was in Colombo, Sri Lanka claimed against the owners of the ship "Carl Offersen" damages for short-delivery of cargo on board the said ship for carriage from Karachi to Colombo. The writ was served on the said ship and the ship was arrested in Singapore. The ship was released on January 17, 1975 on the defendants providing security for the plaintiffs' claim in the sum of U.S.$1,750,000. On January 18, 1975 the defendants entered conditional appearance. On January 30, 1975 defendants filed a motion for, *inter alia*, the writ to be set aside on the grounds that the court had no jurisdiction or that all further proceedings be stayed.

The "Carl Offersen" was registered at Denmark and was owned by a company in Denmark. The proper law of the contracts of carriage contained in the Bills of Lading was Danish Law. The plaintiffs were faced with a time bar in Denmark.

Held: (1) the court had a discretion whether to grant a stay or not, but should exercise that discretion by granting a stay unless the plaintiffs could show strong cause why the action should continue;

(2) in this case there was no evidence at all relating to the likely issues of fact which was in Singapore. The disputes between the plaintiffs and the defendants were not in any way connected with Singapore or Singapore law. The court would therefore exercise its discretion by granting a stay.

Cases referred to:-

(1) *The "Adolf Warski"* [1976] 1 Lloyd's Rep. 107.

(2) *The "Eleftheria"* [1969] 1 Lloyd's Rep. 237, 242.

MOTION IN ADMIRALTY *IN REM*.

Denis Murphy for the applicants/defendants.

P. Selvadurai for the respondents/plaintiffs.

Cur. Adv. Vult.

Chua J.: On January 8, 1975, the plaintiffs, whose address is Colombo, Sri Lanka, issued a writ against the owners of the ship "Carl Offersen". The indorsement of claim reads as follows:

"The plaintiffs claim as owners of goods and/or indorsees of the Bills of Lading of goods shipped on board the defendants' vessel 'Carl Offersen' for carriage from Karachi to Colombo against the defendants damages for breach of contract and/or breach of duty and/or negligence of the defendants their servants or agents in respect of damage done to the said goods and/or short-delivery of the said goods during the said voyage."

On the same day the writ was served on the "Carl Offersen" and the ship was arrested in Singapore. The ship was released on January 17, 1975, on the defendants providing security for the plaintiffs' claim in the sum of US$1,750,000. On January 18, 1975, the defendants entered conditional appearance. On January 30, 1975, the defendants filed a motion for the following orders:

"1. That the Writ of Summons and all subsequent proceedings herein be set aside on the grounds that this Honourable Court has no jurisdiction to entertain the Suit;

2. Alternatively that all further proceedings herein be stayed on the grounds that as the plaintiffs have alleged a contract with the defendants evidenced by or contained in the Bills of Lading referred to in the Indorsement on the writ herein all disputes arising out of or in connection with the subject matter in respect of which this action is brought including the contractual position between the parties should be referred and submitted for determination by a tribunal other than this Honourable Court as provided for in the said Bills of Lading;

3. That the defendants be granted such further or other relief as to the Honourable Court seems just;

4. That the costs of these proceedings be taxed and paid by the plaintiffs to the defendants."

The defendants' motion was set down to be heard on February 28, 1975, but this date was vacated *sine die* in order that further investigations could be carried out by both parties into the facts of the case and in order that the possibilities of negotiating a settlement might be considered. No settlement has been reached and this motion now comes before the court. At the hearing counsel for the defendants proceeded only on the alternative prayer namely that all further proceedings herein be stayed.

The "Carl Offersen" is registered at the port of Aabenraa, Denmark, and is owned and managed by Rhederi M. Jebsen A/S (Limited) of Aabenraa, Denmark.

The goods of the plaintiffs were alleged to have been shipped under three Bills of Lading, all dated March 23, 1974, for shipment from Karachi to Colombo. According to the plaintiffs they had obtained part-delivery of the goods shipped and the present claim is for short-delivery under the Bills of Lading. According to the defendants at that time the "Carl Offersen" was chartered to the Overseas Business Corporation Ltd. of Hong Kong and the said Bills of Lading were not signed by the master nor by them. According to the defendants the goods said to have been shipped pursuant to the Bills of Lading were in fact not so shipped or at all.

The following matters are common ground. First, that the proper law of the contracts of carriage contained in or evidenced by the Bills of Lading is Danish law. Second, that all the contracts were subject, in effect, to the Hague Rules. Third, that Denmark, Pakistan, Sri Lanka and Singapore would all apply the Hague Rules in the event that a dispute of the present nature appeared before their courts. Fourth, that the plaintiffs are at present faced with a time bar in Denmark.

The general principle of law applicable to cases of this kind is that the court has a discretion whether to grant a stay or not, but should exercise that discretion by granting a stay unless the plaintiffs show strong cause why the action should continue (see *The "Adolf Warski"*[1]).

The plaintiffs relied on the following matters, apart from the question of the claim now being time-barred in Denmark, as displacing the *prima facie* case for a stay.

First. They have caused a business search to be made on the defendant company by their solicitors in Denmark and are informed that the four directors

of the defendant company were at all material times resident in Hong Kong. They say that the control and management of the defendant company is in fact concentrated in Hong Kong and apart from being merely registered in Denmark, the defendant company has no real connection with Denmark.

Second. During the course of correspondence between the plaintiffs and the defendants, the defendants through their agents and their solicitors have on various occasions admitted that the goods were in fact short delivered and the defendants' allegation that the goods were never shipped at all is incorrect.

Third. The Bills of Lading issued by the defendants were clean and marked "shipped in apparent good order and condition"; they were informed by their Danish solicitors that the position in Denmark with regard to clean bills of lading is that evidence contrary to the said Bills of Lading is not permissible. Thus, even if the action were to be heard in Denmark, the defendants would not be requiring the crew members as witnesses.

Fourth. They were informed that the position in Singapore as regards statements appearing in bills of lading are more or less the same and the defendants would be estopped from adducing evidence contrary to the said Bills of Lading. Therefore, if the action were allowed to be continued in Singapore it would not be necessary for the defendants to obtain witnesses to attend here or incur any costs of translation, transport and other expenses.

Fifth. It would cost the plaintiffs twice as much to get their witnesses from Karachi, Sri Lanka and Hong Kong to Denmark than it would cost the defendants to bring their witnesses to Singapore, which is, due to its geographical situation, central and within convenient distance of both parties.

Sixth. All relevant documents such as the Bills of Lading, correspondence and agreements between the plaintiffs and the shippers are in the English language and the plaintiffs are unaware of any other documents which may require translation if the action is to be heard in Singapore. If, however, the action were to be commenced in Denmark, an interpreter would be required for interpretation of the testimonies of all the plaintiffs' witnesses.

Seventh. That the defendants intend to rely on crew members employed by them and the defendants would have no problems in requiring their staff to attend court. In contrast, it is the plaintiffs who have to obtain witnesses from various jurisdictions over which they have no control and it is they who face the problems of being unable to compel witnesses to attend.

Eighth. The plaintiffs have been advised by their Danish solicitors that party and party costs for an action to be tried in Denmark would on a very conservative scale amount to US$48,000 to US$60,000. In contrast, they are advised that the costs in Singapore would not reach such an astronomical scale and it would be best for all parties concerned that the action be allowed to continue in Singapore.

Ninth. The plaintiffs' desire to continue the litigation in Singapore is *bona fide*. It has been pointed out to the plaintiffs that the Singapore jurisdiction is favourable to the defendants in that the tonnage limitation in Singapore is lower than that in Denmark. Despite that, however, the plaintiffs are prepared and willing to carry on with the action in Singapore. The defendants, on the other hand, have given no heed to practical considerations in favour of litigation in Singapore and are insisting on Danish jurisdiction merely to inconvenience the plaintiffs.

The defendants rely strongly, as they are entitled to do, on the *prima facie* case for a stay. They further contend that that *prima facie* case is strengthened by the following matters. First, that the defendants have a real and substantial connection with Denmark in that they are a Danish company and the ship is a Danish ship.

Second, that the officers of the ship at the relevant time were Danish and that several of them are now resident in Denmark; that the defendants would wish to call ship's officers and crew as witnesses; that these officers and crew cannot be compelled by a Danish Court to appear as witnesses in connection with the case pending before the Singapore Court and therefore, unless the relevant Danish witnesses are prepared voluntarily to appear before the Court in Singapore, the defendants will not be able to put their evidence to the court; that even if they are prepared to appear the defendants would have to meet the expenses for bringing them to, and providing for their stay in, Singapore, and this might also entail having to pay for any loss of income they suffer.

Third, that if the Danish witnesses wish to give evidence in their native tongue in Singapore, they would have to do so through an interpreter whereas before a Danish Court they can give evidence and be cross-examined in their native tongue.

Fourth, that Denmark has ratified the international convention relating to the limitation of liability of owners and sea-going ships signed at Brussels in 1957 and has adopted the convention in Chapter 10 of the Danish Maritime Code (No. 227 of April 24, 1974); that under Danish law the limitation action will be tried as part of the main proceedings.

Fifth, that the Danish Maritime and Commercial Court in Copenhagen, which is the court this case will be referred to if the proceedings are in Denmark, will accept documents in the English language without a translation; that it follows, therefore, that if the entire proceedings including the limitation of liability aspect of the matter were to be tried in Denmark, documents in the English and Danish languages would be accepted by the court without translations, whereas in Singapore any documents other than in the English language must be translated.

Sixth, that the disputes between the plaintiffs and the defendants are not in any way connected with Singapore or Singapore law and the only reason why the case is before the Singapore Court is because the "Carl Offersen" was arrested in Singapore by the plaintiffs for security when she was in port in the course of another voyage.

Seventh, that the security given in respect of the Singapore arrest will be replaced by like security by the defendants' protection and indemnity club for the purposes of litigation in Denmark if the Singapore action is stayed; that in fact on February 5, 1975, the defendants' solicitors wrote to the plaintiffs' solicitors and made such an offer.

Eighth, that apart from the provisions in the Bills of Lading as to jurisdiction, the plaintiffs had timely notice of the defendants' intention to litigate in Denmark because the motion was filed on January 30, 1975, and by the aforesaid letter dated February 5, 1975, the defendants even nominated solicitors in Denmark to accept service of proceedings in Denmark; that inspite of that the plaintiffs allowed the one year period of limitation in Denmark to expire.

Ninth, that if the court is of the view that the defendants should not plead time limitation as a defence in Denmark, the defendants were prepared to give an undertaking not to do so if the plaintiffs commence proceedings in Denmark within a period of three months from the date of the order made by this court.

In exercising its discretion the court should take into account all the circumstances of the particular case. The matters, where they arise, that may be properly regarded are summarised by Brandon J. in *The "Eleftheria"*.[2]

The contention of the plaintiffs that the control and management of the defendant company is in fact concentrated in Hong Kong is not well-founded. Nor is their allegation that the defendants through their agents and their solicitors have on various occasions admitted that the goods were in fact short-delivered substantiated. The copies of correspondence that are exhibited to the affidavit of one of the plaintiffs' witnesses (Mr. K.M.M.B. Kulatunga) are correspondence not between the defendants' agents and the plaintiffs but between the agents of the charterers and the plaintiffs.

I have considered carefully all the factors advanced by either side in support of and against a stay in the present case other than the factor of the time bar in Denmark. I am of the view that the plaintiffs have failed to show strong cause why this action should continue.

The main matter which is of dominant significance in this case is that no evidence at all relating to the likely issues of fact is in Singapore. The disputes between the plaintiffs and the defendants are not in any way connected with Singapore or Singapore law. The only reason why the case is before this court is because the ship was arrested here by the plaintiffs for security when she was in port in the course of another voyage. This is a strong factor tending to reinforce the *prima facie* case for stay. There are other factors of substantial importance namely the real connection of the defendants with Denmark and the defendants' willingness to protect the plaintiffs in relation to security for their claim and their willingness to give an undertaking not to plead time limitation as a defence in Denmark if the plaintiffs commence proceedings in Denmark.

I have come to the conclusion that I should exercise my discretion by granting a stay on the conditions that the defendants provide a similar security in Denmark and give an undertaking not to plead time limitation as a defence in Denmark if the plaintiffs commence proceedings in Denmark within a period of three months from the date of the order made by this court.

In the result the motion is allowed with costs.

Motion allowed.

Solicitors: *Murphy & Dunbar; Rodyk & Davidson.*

PUBLIC PROSECUTOR v. MOHAMED ALI BIN MOHAMED AMIN & ANOR.

[A.Cr.J. (Wee Chong Jin C.J.) January 10, 1979]
[Singapore — Magistrate's Appeal No. 22 of 1978]

Bribery and Corruption — Corruption — Immigration officers accepting money from tourist tout — Supplying tout with information contained in completed Embarkation Forms — "Corrupt" acceptance — Question of fact — Prevention of Corruption Act (Cap. 104), s. 6(a) — Penal Code (Cap. 103), s, 34.

Immigration — Immigration officers — Supplying information in Disembarkation Forms to tourist tout — Standing instructions prohibiting divulgence to public — Whether acceptance of gratification amount to "corrupt" acceptance — Prevention of Corruption Act (Cap. 104), s. 6(a) — Penal Code (Cap. 103), s. 34.

The respondents in this case were Immigration Officers. They were jointly charged under section 6(a) of the Prevention of Corruption Act for corruptly accepting money ($30) as a reward for supplying information contained in the Embarkation forms to one Noor, a tourist tout. There was a standing instruction to all Immigration officers that the information contained in those forms could not be divulged to the public. The learned district judge in acquitting the accused found the preparation of the list from the information contained in the completed Disembarkation Forms for the purpose of enabling the tourist tout to tout for business from incoming tourists was not an act in relation to their principal's affairs or business because it was "an innocuous act in relation to their principal's affairs." The prosecution appealed.

Held, allowing the appeal: (1) the finding that what the respondents did was not an act in relation to their principal's affairs was clearly wrong;

(2) whether or not acceptance of a gratification amounts to a "corrupt" acceptance punishable under the Prevention of Corruption Act is a question of fact which falls to be decided on the proved facts and the circumstances in each case.

MAGISTRATE'S APPEAL.

Loke Yoon Kee (Deputy Public Prosecutor) for the appellant.

Mohamed Kamil bin Mohamed Fadzullah Suhaimi for the first respondent.

Joe Chellam for the second respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The respondents, Mohd. Ali bin Mohd. Amin and Mohd. Ibrahim bin Abdul Kadir were jointly charged on the following charge: —

"You, Mohd. Ali bin Mohd. Amin and Mohd. Ibrahim bin Abdul Kadir are charged that you on or about the 17th day of May 1977 at about 6.40 a.m. at the Paya Lebar Interna-